



July 14, 2006

Federal Trade Commission/Office of the Secretary, Room H-135 (Annex W)  
Re: Business Opportunity Rule, R511993  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

To Whom It May Concern:

This letter is in reference to the proposed New Business Opportunity Rule R511993. We are concerned that this ruling will jeopardize the future of our home party business, Market Day Gourmet. While we understand that part of the FTC's responsibilities is to protect the public from "unfair and deceptive acts or practices," some of the sections in the proposed ruling will make it very difficult if not impossible for Market Day Gourmet to continue in the home party business.

Market Day Gourmet is a new division of Market Day. Our parent company has been in the fundraising industry for over 30 years, and has helped raise over \$350 million for education across the country. Market Day Gourmet offers gourmet foods and kitchen accessories in a home party format through Independent Sales Consultants ("Consultant(s)"). What makes Market Day Gourmet unique is that every party is a fundraiser, with a portion of party sales provided to a school or worthy cause.

We have approximately 200 active Consultants. Our annual sales are approximately \$1 million and this year we have donated over \$50,000 to charitable organizations.

One of the most confusing and burdensome sections of the proposed rule is the seven day waiting period to enroll new Consultants. Market Day Gourmet's starter kit is only \$150, and consumers often make other purchases that far exceed that cost without any type of waiting period. A waiting period creates the impression that there might be something wrong with the plan. The waiting period is also unnecessary since Market Day Gourmet already has a 90% buyback policy for all products including the starter kit purchased by a Consultant in the last twelve months. It will be difficult, if not impossible to truly track when an existing Consultant first makes contact with a prospective new Consultant and expect that these documents will be retained for three years. The record keeping for both our company and the Consultant would be cost prohibitive and potentially inaccurate.

Under the proposed rule, Market Day Gourmet's plan would fall under FTC regulatory authority, since the existing \$500 threshold under the existing franchise rule will be eliminated. Market Day Gourmet would have to produce numerous documented materials to comply with the proposed rule, which is more appropriate for businesses requiring a greater investment than a sales kit.

The proposed rule calls for the release of any information regarding prior litigation and civil or criminal legal actions involving misrepresentation, or unfair and deceptive practices. It does not matter if the company was found innocent or the subject of the claim. We see little value in disclosing these lawsuits to prospective consultants unless the company is found guilty. Otherwise, Market Day Gourmet is placed in an unfair position even though we have done nothing wrong.

In addition, with this rule, claims unrelated to the Consultant's business would be included. Should a prospective Consultant be concerned, for example, about litigation between the company and a software provider if her/his contract dispute contains a claim for misrepresentation? It would seem appropriate to include only litigation that is related to the earning opportunity offered to the prospective Consultant.

The proposed rule requires direct selling companies to gather information such as time periods, consultant demographic/geographic data and earnings claims. We are concerned that this approach will be ineffective in preventing fraud, since those perpetuating fraudulent business opportunities will not provide accurate data. However, direct sellers such as Market Day Gourmet, which will try faithfully to comply, will have the difficult challenge of interpreting and meeting these proposed requirements.

Additionally, the proposed rule requires disclosure of the name, city, state and telephone number of at least 10 prior purchasers of the business opportunity within the past three years, nearest to the perspective purchaser. Market Day Gourmet is happy to provide references, but in today's world of identity theft, we are uncomfortable giving out personal contact information of our Consultants (without their approval) to strangers. Ironically, the personal information that would be disclosed due to this rule may result in privacy lawsuits, which under this rule we would also have to report. Giving out this information without any controls on how it could be used will very likely and unfairly benefit our competitors.

The process of determining 10 prior purchasers in a given area and verifying this information would add a great burden of work to the staff of our new company. Also, the following sentence required by the proposed rule will cause many people to choose against becoming an Independent Consultant: "if you purchase a starter kit from us, your contact information can be disclosed in the future to other buyers." People are very concerned about their privacy and identity theft and so are we, from a privacy litigation standpoint. Individuals will be reluctant to share their personal information with individuals they may have never met.

Market Day Gourmet appreciates the work of the FTC to protect consumers, but we believe this proposed new rule has many unintended consequences, which may destroy our business. We also believe that there are less burdensome alternatives available to achieve the consumer protection goals stated in the proposed rule.

Thank you for considering our comments on this matter.

Sincerely,  
Market Day Gourmet, Inc.

By: William S. Sivak, Jr.  
Executive Vice President